

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

June 17, 2003

MAINE PUBLIC UTILITIES COMMISSION
Regarding the Provision of
Payphone Service in Maine

Docket No. 2003-420
NOTICE OF INQUIRY

Office Of The Public Advocate
Petition To Initiate Proceedings Regarding
Conversion And Removal Of
Public Payphones

Docket No. 2002-495
ORDER CLOSING
DOCKET

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we open an Inquiry to gather information regarding the need for public interest payphones (PIPs) in Maine. We decline to act on the Public Advocate's request to investigate Verizon's payphone policies or recent practices with regard to payphone removal.

II. BACKGROUND

On August 21, 2002, the Public Advocate (OPA) submitted a petition asking that the PUC open an investigation, or an inquiry, into Verizon's recent practices and changed policies with respect to public payphones. The OPA requested that the Commission investigate Verizon's new public payphone policy and, if necessary, propose rules, applicable to all local exchange carriers and other payphone providers, to establish standards for the minimum availability of public payphones. The OPA is concerned that Verizon intends to remove public pay phones that it deems uneconomic or to maintain them only if the relevant governmental agency agrees to pay higher monthly rates (i.e., for a semi-public payphone).

The OPA stated that his office had received a number of complaints regarding the availability of public payphones in general and Verizon's new policies in particular. The OPA petition also recommends that the PUC consider a new rule that would require at least one public payphone in the downtown area of every municipality of 500 or more people and require a minimum standard of one public payphone for an established number of square miles of inhabited area.

The Federal Communications Commission (FCC) and this Commission have previously examined public interest payphones in response to Section 276(b)(2) of the Telecommunications Act of 1996 (TelAct) which required the FCC to determine whether

"public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would not otherwise be a payphone," should be maintained. The FCC directed each state to evaluate whether it must take any measures to ensure the existence of PIPs. The FCC left the funding of a PIP program to the discretion of the individual states so long as the funding mechanism fully and equitably distributed the cost of such a program and did not involve the use of subsidies prohibited by Section 276(b)(1)(B) of the TelAct. The FCC addressed the issue of PIPs in its September 20, 1996, Order in CC Docket No. 96-128 (Payphone Order), particularly in paragraphs 264 through 286.¹

The FCC adopted the following definition for a PIP in paragraph 282 of its Payphone Order: "a payphone which (1) fulfills a public policy objective in health, safety, or public welfare, (2) is not provided for a location provided with an existing payphone contract, and (3) would not otherwise exist as a result of the operation of the competitive marketplace."

In 1998, the PUC conducted an inquiry in Docket Number 98-356. In an Order issued May 21, 1998, we stated,

In this Order, we decline to initiate a public interest payphone (PIP) program at this time, but announce our intent to monitor the development of the competitive payphone market in Maine. We do not believe a PIP program is needed at this time; Maine has yet to realize a significant impact from the implementation of Section 276 of the Telecommunications Act of 1996. However, recognizing the changing nature of the marketplace, we will continue to monitor the need for a PIP program. If in the future evidence is presented to indicate a need, this issue will be addressed.

On January 17, 2003, we issued a Procedural Order asking payphone providers and interested persons questions regarding numbers of installed payphones, proposed definition of PIP locations, and PIP funding mechanisms. We received responses from all incumbent local exchange carriers in Maine; Verizon Maine; the Telephone Association of Maine; two COCOT companies; the Public Advocate; the South Portland Public Library; the Cliff Island Association; and the Town of Vinalhaven.

¹ See In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388, released September 20, 1996.

III. DISCUSSION

Responses to our Procedural Order indicate that the numbers of public and semi-public payphones have declined substantially since March 1998 when the first inquiry was conducted. The number of payphone providers, both LEC and COCOT (customer owned coin-operated telephone) operator, has also declined.² However, the provision of cellular telephone service has increased significantly and is one of the reasons payphone providers cite for the declining profitability of payphones.

Verizon, in its response to the Procedural Order, stated that any definition of a PIP location should be consistent with the FCC's prescribed definition of public interest payphones. Verizon also stated that the most appropriate funding mechanism would be for the particular governmental entity making the request for a PIP to contract directly with a payphone provider and to recover the associated expense from its fiscal budget. Any state administered fund for PIPs is unnecessary, according to Verizon.

The OPA's response to the Procedural Order also supported the FCC definition of a PIP program. For funding, the OPA supports a proportional assessment on Maine's payphone market or a fund created by governmental contracts with payphone operators who seek to provide profitable payphones on public property.

The Telephone Association of Maine's (TAM) response to the Procedural Order cited a definition established by the New Hampshire Public Utilities Commission (NHPUC) that according to TAM, provide clear and meaningful guidance for what constitutes a public interest payphone. The NHPUC definition follows the FCC definition, adding more detail regarding revenue requirements, location, type of phone and distance from other PIP locations. TAM also says that municipalities should be able to designate multiple PIP locations if the municipality pays the costs.

Apollo Communications (a private payphone operator) indicated that a PIP location should be in the center of towns, possibly outside the local post office. Apollo also stated that payphone providers should not be surcharged to fund PIPs and that, because payphone use has declined due to of the proliferation of cell phones, that cell phone companies should be the funding source.

In this Inquiry, we seek to gather additional information regarding the need for public interest payphones in Maine. Interested persons responding to this Notice of Inquiry are asked to comment on what considerations or evidence, including any quantitative evidence, supports their views that subsidized PIPs are either necessary or

² While only two COCOT companies responded to our Procedural Order, decreased numbers of COCOTs are indicated by data supplied by Verizon.

unnecessary in Maine. In particular, if lack of demand for pay phone calling has led to the removal of payphones by LECs and independent operators, what is the justification for subsidization? If possible, commenters should suggest what indicators might be used to determine the geographic location of PIPs (e.g., need for access to emergency services on roadways, availability of cellular service in the area in question, personal income data and payphone locations by census block, etc). We also seek comment on approaches and standards that have been adopted or considered in other states, and the applicability of such approaches in Maine. Any information previously provided in response to the Procedural Order, need not be resubmitted.

We also request information regarding funding mechanisms to support payphones identified as PIPs, including comments on the following possible alternatives:

1. Industry assessments (payphone and/or cellular industry);
2. Universal service funding;
3. Contract requirements (that placement of phones in PIP locations be linked to placement in lucrative locations);
4. Site owner pays (semi-public payphone installed by property owner or municipality if public property);
5. Site owner pays (semi-public payphone), as in No. 4 above, but at discounted rates provided by ETC (see No. 6 below);
6. Use of lower-cost phones (e.g., non-coin phones usable only with calling cards); and
7. ETCs (eligible telecommunications carriers) provide as part of regulatory requirements.

Written responses to the questions raised in this Inquiry and any other comments shall be filed with the Administrative Director no later than July 18, 2003.

We will conduct a public hearing to discuss the filed comments.

This Inquiry will not be concerned with Verizon's policies for removal of payphones or its communication with site owners to convert low-return public payphones (owned by the company) to semi-public payphones (monthly charge paid by the site owner). The OPA requested that we order Verizon to postpone implementation of Verizon's new public payphone conversion or removal policy. Verizon stated that it

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond